CRIMINAL APPEAL.

Maidin bin Mohamed Ibrahim for the appellant.

Abdul Hamid bin Haji Omar (Deputy Public Prosecutor) for the respondent.

Hashim J.: The appellant was charged under sections 354 and 511 of the Penal Code. He claimed trial. The learned Magistrate found him guilty and convicted him. For some odd reason the learned Magistrate exercised his powers under section 173A of the Criminal Procedure Code and ordered appellant to execute "a bond of good behaviour in one surety at $200 for a period of 10 months"; a most extraordinary sentence. One does not record a conviction under section 173A of the Criminal Procedure Code. The appellant at the material time was a postman and went to Kampong Ayer Puteh to deliver letters. As the learned Magistrate "convicted" the appellant he therefore accepted the evidence of the woman, Mek binte Jumaat *in toto* and found the appellant guilty of the offence for which he was charged. The learned Magistrate should have imposed a deterrent sentence to deter other postmen from molesting women in remote and lonely areas. Kampong Ayer Puteh is about 19 miles from Kemaman Town.

The evidence of Mek binte Jumaat was that on 25.10.62 she was sweeping the rubbish behind her house in her compound. She was alone and had only a sarong on tied up to her breast. The appellant came and asked her where a neighbour Rahmat or his wife had gone. She told the appellant Rahmat and his wife were not at home and she did not know where they had gone. Appellant then went up to about 3 feet to Mek. Mek retreated a little. Appellant became pale and Mek interpreted this facial expression as an intention to "disturb" her. She went underneath the house. Appellant went to the front steps of the house. He asked Mek whether she was single or married. Mek told him she was married. He then pulled out $5 and said: "Even if you are married take this money" Mek refused and ran away towards the river. Two witnesses saw Mek running towards the river. The defence was a complete denial. Appellant stated on oath that he went to the village on duty and enquired after Rahmat from Mek. Mek told him that Rahmat had gone to work at the river. He went to the river in search of Rahmat.

In my opinion the charge was badly drafted. The charge was that the appellant attempted "to use criminal force to one Mek binte Jumaat, a woman intending to outrage the modesty of the said woman by such act". "Criminal force" is defined in section 350, Penal Code as follows:—

"Whoever intentionally uses force to any person, without that person's consent, in order to cause the committing of any offence, or intending by the use of such force illegally to cause, or knowing it to be likely that by the use of such force he will illegally cause injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other."

No evidence whatsoever was adduced to suggest that appellant intended to use criminal force on Mek. If Mek's evidence is accepted all the appellant did was to pull out $5 and said: "Even if you are married take this money." These words coupled with the offer of the $5 could give rise to the inference that it was a solicitation for sexual intercourse. If Mek had accepted the offer, in my opinion, no offence would be committed under the civil law but possibly under section 135 of the Administration of Islamic Law Enactment, 1955 (Trengganu).

In my opinion even if Mek's evidence is accepted the words uttered by the appellant are so vague that one cannot say with certainty that there has been a solicitation for sexual intercourse. Mere probability is not sufficient in a criminal case to sustain a conviction. The appeal is therefore allowed and the finding and sentence of the learned Magistrate reversed.

Appeal allowed.

MOHAMED LAJAN v. DAUD

[O.C.J. (Gill J.) April 22, 1963]

[K.L. — Selangor Civil Appeal No. 10 of 1962]

Tort — Respondent stopping appellant from plucking and disposing of coconuts — Appellant taken to police station for interrogation — Whether false imprisonment — Whether appellant entitled to damages.

Evidence — Unregistered lease — Whether admissible for collateral purpose of showing nature of possession.

In 1944, the appellant in partnership with two men bought a piece of land from one M.H. The land was not registered in the appellant's or his partners' names although he had possession until about 1953 when he moved to another place. M.H. died in 1946 and his son paid the land rent in 1956. In 1960, the son leased the land to the respondent.

On April 26, 1960, the appellant was plucking coconuts on the land when the respondent appeared and stopped him from doing so. The appellant took the coconuts to a kampong where the defendant, in the presence of many people stopped him from selling the coconuts. The appellant left the coconuts there and went home. The respondent reported to the police that the appellant had stolen his coconuts. At about 6 p.m. on the day the appellant was asked by a Police Sergeant to go to the police station where he had to wait for some time before he was interrogated by the police. After the interrogation he was told to go home.

In an action for false imprisonment and defamation, the learned President held that (1) there was neither arrest nor imprisonment, (2) the statement that the appellant had stolen the coconuts was not defamatory because the respondent's lease showed that he had a genuine belief that he had the right of possession of the coconuts and that the appellant had not. On appeal, the allegation of defamation was abandoned.

Held: (1) there was no false imprisonment in this case but even if there was any false imprisonment committed by the police, the respondent was not liable as he did not ask or order the police to do so;

(2) the appellant was also not falsely imprisoned on the land or in the kampong;

(3) the lease was admissible for the collateral purpose for which it was put in, namely a purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property. An unregistered document may be admissible for the collateral purpose of showing the nature of possession.

Cases referred to:—

(1) *Meering* v. *Grahame-White Aviation Company Limited* (1920) 122 L.T. 44, 51, 53.

(2) *Bird* v. *Jones* 7 Q.B. 742.

(3) *Warner* v. *Riddiford* 4 C.B. N.S. 204.

(4) *Walters* v. *W.H. Smith & Son Ltd.* [1914] 1 K.B. 595.

(5) *Dumbell* v. *Roberts & Ors.* [1944] 1 All E.R. 326, 331.

(6) *John Lewis & Co. Ltd.* v. *Tims* [1952] A.C. 676.

(7) *Christie* v. *Leachinsky* [1947] A.C. 574.

(8) *Grinham* v. *Willey* 4 H. & N. 496, 157 E.R. 934, 935.

(9) *Sewell* v. *The National Telephone Co. Ltd.* [1907] 1 K.B. 557, 559.

(10) *Meering* v. *Grahame-White Aviation Company Limited* (1920) 122 L.T. 44.

(11) *Wong Kok San* v. *W.H. Salt* [1952] M.L.J. 204.

(12) *Wheeler* v. *Whitting* (1840) 9 C. & P. 262; 173 E.R. 828.

(13) *Simpson* v. *Hill* (1795) 1 Esp. 431.

CIVIL APPEAL.

M. L. R. Doraiswamy Aiyer for the appellant.

Athi Nahappan for the respondent.

Cur. Adv. Vult.

Gill J.: This is an appeal from a decision of the President, Sessions Court, Kuala Selangor dismissing the claim by the appellant as plaintiff in Civil Action No. 6 of 1960 in that court against the respondent as defendant for damages for false imprisonment.

The facts of the case, on the evidence before the learned President, were as follows. On 18th April, 1944 the plaintiff, in partnership with two others, entered into an agreement for the purchase from one Mohamed Hussain of his land held under E.M.R. 3167 for Lot No. 1468 in the Mukim of Pasangan in the District of Kuala Selangor (to which I shall refer as "the land"). He claimed that he was put in possession of and obtained the document of title to the land, although the land has not been registered in the names of the alleged purchasers up to now. He built a house on the land one week after he had bought it, but when the house collapsed he moved to Kampong Kuantan where he had been staying for about 7 years prior to 26th April, 1960 the date of the alleged incident which led to the proceedings in the Sessions Court.

Mohamed Hussain went away to India in 1946 and died there subsequently. His son in this country named Mohamed Yusoff bin Hussain, on coming to know in 1956 that the land was to be auctioned for non-payment of rent, made enquiries at the Land Office and paid the rent, thus saving the land from being auctioned. Later, in the year 1960, he leased the land to the defendant. Admittedly the son had been taking the produce from the land for some time prior to the lease of the land by him as a so-called trustee to the defendant.

As regards what took place on April 26, 1960 the evidence of the plaintiff was that at about 3.10 p.m. on that day he went to pluck coconuts on the land. He had plucked 30 coconuts when the defendant appeared on the land and stopped him from plucking any more coconuts on the ground that the defendant had taken a lease of the land from Yusoff bin Hussain. It is not clear what happened next but apparently the plaintiff took the coconuts to Kampong Kuantan where the defendant, in the presence of many people, stopped the plaintiff from selling the coconuts. The plaintiff left the coconuts there and went home. At about 6 p.m. on the same day he was in the house of a friend named Bakar when a Police Sergeant came and asked him to go to the Kuala Selangor Police Station. He subsequently went to the Police Station where he had to wait for some time before he was interrogated by a Police Inspector for about half an hour. After the interrogation he was told to go home.

The plaintiff produced some police witnesses to give evidence on his behalf. Zakaria bin Peral (P.W. 3), Police Corporal 2237, gave evidence to say that a Malay named Daud reported to him on the telephone that a person named Mohamed Jan had stolen 30 coconuts from his "kebun". He wrote down the report in his diary and later entered it in the Report Book. He then informed Police Inspector Chin Chong Seng about it. Ramli bin Haji Hussain (P.W. 2), Police Sergeant 2047, testified that in consequence of Report No. 380 he went to the house of the plaintiff on April 26, 1960 at 4.00 p.m. and asked him to go to the Kuala Selangor Police Station. Later in the evening at about 8.40 p.m. he saw the plaintiff sitting in front of the Police Station by the side of the road. Inspector Chin Chong Seng (P.W. 4) said that on April 26, 1960 he was informed of a report of theft of coconuts and that he ordered a Sergeant to carry out investigations. He interviewed the plaintiff and the defendant in his room at the Police Station that evening after which he told them to go because he found that the dispute between them was of a civil nature.

The defendant's story was that he was a lessee of the land under an agreement with Yusoff bin Hussain whom he called the trustee for the land. He paid $500 in advance to Yusoff for the lease and to his knowledge no one was living on the land. On April 26, 1960 he visited the land and saw the plaintiff there in the act of plucking coconuts. When asked why he was plucking coconuts the plaintiff said that he had bought the plantation, but when requested to show proof of his having bought the land he refused to show any proof. On the defendant informing the plaintiff about the lease which

he had obtained from Hussain's son for four years the plaintiff said, "I don't care whether you got a lease or not because I have this land. If you want to lodge a report, you may lodge a report." The plaintiff then brought the coconuts to Kampong Kuantan for sale. The defendant 'tahan' him and the coconuts at a shop and then went to lodge a report. Subsequently Sergeant Ramli arrived at Kampong Kuantan and after a short enquiry requested the parties to go to the Kuala Selangor Police Station. The defendant arrived at the Police Station at about 9.00 p.m. and the plaintiff arrived there about ten minutes later on a bicycle. The plaintiff was not imprisoned and both of them waited outside the Police Station for some time before they were interviewed by a Police Inspector. The defendant admitted under cross-examination that because he 'tahan' the plaintiff at a Chinese shop, the Chinese woman at the shop refused to buy the coconuts. He also said that had the plaintiff shown any proof about his having bought the land, he would not have lodged the report.

Upon that evidence the learned President dismissed the action on the ground that clearly there was neither arrest nor imprisonment. As the learned President stated in his grounds of judgment, what actually happened was that after receiving a report from the defendant the police asked the plaintiff to come to the Police Station for the purpose of investigation and that when the plaintiff went to the Police Station, the police interrogated him and then asked him to leave. The learned President also dealt with the question of defamation. This was done presumably because at the commencement of the hearing of the action the parties agreed that the issues before the court were false imprisonment and defamation. Upon the question of defamation the learned President said that the only defamatory statement disclosed was the allegation by the defendant that the plaintiff had stolen his coconuts. He went on to say that the facts showed the defendant's genuine belief that he had the right of possession to the coconuts, and that the plaintiff had no such right.

The grounds of appeal in this case are: (a) that there was ample evidence that the appellant was subjected to false imprisonment and that the appellant and his other co-partners had bought the land in question by an agreement dated the 18th April, 1944 when the extract of the Mukim Register was deposited with them and the possession of the land was given to them by the owner (b) that the learned President had been confused with the issue in the action before him, which was clearly for false imprisonment and not for defamation and (c) that the lease produced by the respondent was wrongly admitted in evidence as it had not been registered.

It is not necessary for me to consider ground (b) because it was abandoned at the hearing of the appeal and because the learned President dealt with the question of defamation only because the parties had raised it as an issue. In my opinion ground (c) is without any merit because the lease was admissible for the collateral purpose for which it was put in, namely, a purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property. An unregistered document may be admissible for the collateral purpose of showing the nature of possession. In this case the admission of the agreement of lease was merely for the purpose of showing that the respondent had a genuine belief with regard to his right to the produce of the land.

I now come to the first ground of appeal which is really the only ground of appeal in this case. The question to be considered here is whether the appellant was falsely imprisoned, which in turn poses the question as to what is false imprisonment. It seems clear from the authorities that false imprisonment is any total restraint of the liberty of the person, for however short a time, by the use or threat of force or by confinement, without lawful cause. As stated in *Halsbury's* Laws of England, 3rd edition, Volume 38 page 765: "The gist of the action of false imprisonment is the mere imprisonment; the plaintiff need not prove that the imprisonment was unlawful or malicious but establishes a *prima facie* case if he proves that he was imprisoned by the defendant; the onus then lies on the defendant of proving a justification."

In *Meering* v. *Grahame-White Aviation Company Limited* [1] Duke L.J. said:

> "What constitutes imprisonment has been long ago defined. It is to be found in a work of very good authority in the application of the common law — namely, 'Terms de la Ley' — in these words: 'Imprisonment is no other thing, but the restraint of a man's liberty, whether it be in the open field, or in the stocks, or in the cage in the streets' — referring to now obsolete methods of imprisonment — 'or in a man's own house, as well as in the common gaol; and in all the places the party so restrained is said to be a prisoner so long as he hath not his liberty freely to go at all times to all places whither he will without bail or mainprise or otherwise'."

Atkin L.J. in the same case stated as follows:

> "I am disposed to think that the definition of 'imprisonment' read by my brother Duke from 'Terms de la Ley' is an adequate and sufficient statement of what is meant by that expression. I think that one might add to that a reference to the case of *Bird* v. *Jones* [2], where Coleridge J. indicated that to the definition of imprisonment and restraint of liberty, there has got to be added restraint within a particular space. A further discussion of the question of imprisonment and whether there can be imprisonment without in fact laying hands upon the person of the party imprisoned, is to be found in the case of *Warner* v. *Riddiford* [3], in a discussion by a very learned judge Wills J."

Clerk & Lindsell (12th edition) paragraph 552 at page 289 sums up the position as follows:

> "The prisoner may be confined within a definite space by being put under lock and key or his movements may simply be constrained by the will of another. The constraint may be actual physical force, amounting to an assault, or merely the apprehension of such force or it may be submission to a legal process. A mere partial interference with freedom of locomotion does not amount to an imprisonment."

It would seem clear on the authority of *Warner* v. *Riddiford* that the questions which call for consideration in an action for false imprisonment are:

(1) whether there was any imprisonment;

(2) if so, by whom it was committed; and

(3) whether there was any legal ground for it.

It was argued in this Court by Mr. Doraiswamy Aiyer on behalf of the appellant that the appellant was falsely imprisoned first by the respondent and later by the police in consequence of a report made by the respondent. The two alleged acts of imprisonment call for separate consideration.

As regards arrest by a private person, it was held in the case of *Walters* v. *W. H. Smith & Son Ltd.* [4] that a private person is justified in arresting another on suspicion of having committed a felony if, and only if, he can show that the particular felony for which he arrested the other was in fact committed and that he had reasonable and probable cause for suspecting the other of having committed it. This statement of the law by Sir Rufus Isaacs L.C.J. was cited with approval by the Court of Appeal in the case of *Dumbell* v. *Roberts and Others* [5].

The right of arrest by a private person in England is of course regulated by the Common Law of England. In Selangor the position is regulated by section 27(1) of the F.M.S. Criminal Procedure Code, which provides that any person may arrest another person who, in his view, commits a non-bailable and seizable offence provided that he without unnecessary delay makes over the person so arrested to the nearest Police Officer or, in the absence of a Police Officer, takes such person to the nearest Police Station. In *John Lewis & Co. Ltd.* v. *Tims* [6] the House of Lords held that where one person arrests another in exercise of the Common Law power of arrest, his duty is to take the arrested person before a Justice or to a Police Officer as soon as he reasonably can and not necessarily forthwith. That, in fact, is the express provision of section 27(1) of the Criminal Procedure Code, to which I have referred.

In *Christie* v. *Leachinsky* [7] the House of Lords held that an arrest without warrant can be justified only if it is an arrest on a charge made known to the person arrested. It is a condition of lawful arrest that the party arrested should know on what charge or on suspicion of what crime he is arrested; and, therefore, just as a private person arresting on suspicion must acquaint the party with the cause of his arrest, so must a policeman arresting without warrant on suspicion state at the time (unless the party is already acquainted with it), on what charge the arrest is being made or at least inform him of the facts which are said to constitute a crime on his part.

With regard to arrest by the police on a report made by a private person, in *Grinham* v. *Willey* [8], Pollock C.B. said:

> "We ought to take care that people are not put in peril for making complaint when a crime has been committed. If a charge be made *mala fide*, there are ample means of redress. But in the absence of *mala fides* we ought not to be too critical in our examination of the facts, to see if something is not done without which the charge against the suspected person could not have been proceeded with. A person ought not to be held responsible in trespass, unless he directly and immediately causes the imprisonment."

In *Sewell* v. *The National Telephone Co. Ltd.* [9] Collins M.R. said:

> "If a person desires to obtain a judicial decision from a proper tribunal, and for that purpose states the facts to a police officer, and the latter, acting on his own initiative, arrests the person implicated, no trespass is committed by the person who gives the information to the police officer."

In *Meering* v. *Grahame-White Aviation Company Limited* [10] the Court of Appeal decided that arrest by a police constable which follows the placing of the case in his hand to do his duty is not an arrest by a private prosecutor but is an arrest by the police constable. It was also decided in the same case that absence of reasonable and probable cause for instituting a prosecution against a person affords evidence from which it may be inferred that there was a want of honest belief on the part of the prosecutor in the guilt of the person accused. But absence of reasonable and probable cause alone will not suffice. There must be evidence of some further indirect motive. In *Wong Kok San* v. *W. H. Salt* [11] Callow J. said that a mere statement of facts to a police constable who on his own responsibility makes an arrest or causes a detention can result in no liability to the informer, not even if he is required to sign the charge.

The position, however, is different where A orders a policeman to arrest B; in such a case it is an imprisonment by A as well as by the police and is ground for an action of trespass against A (see *Wheeler* v. *Whitting* [12] and *Walters* v. *W. H. Smith & Son Ltd.*). The case of *Wong Kok San* v. *W. H. Salt* was decided on the same principle and is an authority for the same proposition. It will be observed that in that case the learned Judge held that the Police Corporal in arresting the plaintiff acted as the agent of the defendant and that therefore the defendant was liable for damages. I mention this aspect of the case merely in passing because as far as I can see there was nothing in this case to suggest that the defendant had asked or ordered a policeman to take the plaintiff into custody.

Applying the above principles to the facts of this case, I am of the opinion that the main ground in this appeal must also fail. I have felt it my duty to state these principles because I considered them in order to warn myself of the proper approach in dealing with this appeal, although it seems to me that on the facts the appeal

falls to be decided on the simple question as to whether or not there was any false imprisonment of the plaintiff. Even if there was any imprisonment, on the authorities the defendant was clearly not liable in damages.

With regard to the alleged false imprisonment of plaintiff at the hands of the defendant on the land itself, the only evidence was that the defendant told the plaintiff not to pluck coconuts from the land as he (the defendant) was entitled under a lease to the produce of the land. There was thus no false imprisonment of the plaintiff on the land.

There was no false imprisonment of the plaintiff at Kampong Bahru either. The plaintiff's evidence was that he was stopped by the defendant in Kampong Kuantan Town. He was stopped from selling the coconuts in the presence of many people because the defendant said that the coconuts were his and he (the plaintiff) then went home leaving the coconuts there. The defendant's evidence was that he "tahan" the plaintiff and the coconuts at a shop in Kampong Kuantan as a result of which the Chinese woman at the shop refused to buy the coconuts. It is true that "tahan" means "to restrain", but it also means "to stop". In the light of all the evidence it would seem to be abundantly clear that the plaintiff was not restrained in his movement of action. After what happened at the Chinese shop in Kampong Kuantan he was not stopped from going where he willed, and in fact there was evidence that he left the shop and went away.

It is also clear that the plaintiff was not arrested and detained by the police as a result of the report made by the defendant. All that the defendant did was to make a report to the police accusing the plaintiff of theft of coconuts, but merely to make a report against a person without actual arrest is not imprisonment which will support an action for false imprisonment (see *Simpson* v. *Hill* [13]). The other evidence was that a Police Sergeant asked the plaintiff to go to the Police Station. The plaintiff did so on his own bicycle. There was no evidence that he was compelled to follow the Sergeant to the Police Station. At the Police Station itself the plaintiff was not arrested, detained or confined in any way. A dispute had arisen between the parties and the police were merely carrying out investigations to ascertain the truth. There was some delay in interviewing the parties at the Police Station because the Police Inspector was not free to see them as soon as they arrived, but after the interrogations the plaintiff was allowed to leave because the Inspector was satisfied that the dispute between him and the defendant was of a civil nature. In the circumstances the learned President was quite right in dismissing the plaintiff's action for damages for false imprisonment. This appeal is therefore dismissed with costs.

Appeal dismissed.

Solicitors: *Doraiswamy Aiyer & Kok Thoy; Athi Nahappan & Co.*

DEPUTY PUBLIC PROSECUTOR v. ABDUL RAHMAN

[A. Cr. J. (Winslow J.) April 26, 1963]

[Singapore — Magistrate's Appeal No. 20 of 1963]

Penal Code, ss.361 and 363 — Kidnapping of female minor from lawful guardianship — Whether Muslim girl who attains puberty has guardian — Whether this only confined to Hanafi sect — Meaning of "lawful guardian".

Guardianship of Infants Ordinance (Cap. 16), s.5 — Whether Muslim girl of Hanafi sect who has attained puberty has lawful guardian — Meaning of "lawful guardian".

The accused was charged with kidnapping a female minor under 16 years of age from the lawful guardianship of her father contrary to section 363 of the Penal Code. The girl in question, aged 14 years, voluntarily left Singapore in the company of the accused for Seremban without the consent of her father with a view to getting married to him there which they did. At the end of the prosecution case the learned District Judge acquitted the accused on the ground that the girl was of the Hanafi sect and as she had attained puberty she no longer had a lawful guardian and in the circumstances she could not be said to have been taken away from lawful guardianship within the meaning of section 361 of the Code. On appeal by the Crown,

Held: (1) in this case there was no evidence to support the proposition that the girl was an adherent of the Hanafi sect. If the respondent had wished to rely on *Ghouse's* [2] case it was for him to establish this or to raise it in his defence;

(2) although McElwaine C.J. held in the *Ghouse's* case that a Muslim girl who had attained puberty had no guardian and therefore she could not be taken out of the keeping of the lawful guardian, on an examination of his judgment and the authorities cited by the learned Chief Justice it was clear that a girl only of the Hanafi sect was free from the custody of her guardian as regards the selection of a husband. The emphasis is on her capacity to marry and not on her absolute freedom from the custody of her guardian for all purposes;

(3) the attention of McElwaine C.J. was not drawn to section 5 of the Guardianship of Infant Ordinance in the *Ghouse's* case and his conclusion would have been different if this was done;

(4) in this case in the absence of other evidence the lawful guardian of the girl was her father until her marriage;

(5) the expression "lawful guardian" in section 361 of the Penal Code must be given a meaning which accords with the provisions of section 5 of the Guardianship of Infants Ordinance and the explanation to section 361. If, in its discretion, the Court decides to modify its strict construction of who the guardian is, it may have recourse to Muslim Law so as to do justice to the facts of any particular situation.

Per curiam: In the light of the authorities, it would be dangerous to regard a Muslim girl of the Hanafi sect as being without any lawful guardian for the purposes of the Penal Code merely because she has attained puberty and is free, without the guardian's consent, to make her own selection of her future husband. To hold otherwise would be to expose every Muslim girl professing the tenets of the Hanafi school, who has attained puberty, to the rapacity or cunning of every would-be Lothario, enticer or potential seducer who would only need to cite *Ghouse's* case to escape conviction and punishment.

Cases referred to:—

(1) *R.* v. *Kipps* 4 Cox C.C. 168.

(2) *Ghouse bin Haji Kader Mustan* v. *Rex* [1946] M.L.J. 36.

(3) *Noordin* v. *Shaik Mohamed Meah Noordin Shah* 10 S.S.L.R. 72.